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DAILEY, THOMAS J	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/617,001
Filing Date: July 09, 2003
Appellant(s): ANDERSON ET AL.

David R. Risley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/10/2008 appealing from the Office action mailed 9/26/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4653086	Laube	3-1987
6791571	Lamb	9-2004
4794634	Torihata et al.	12-1988
4597101	Kishimoto et al.	6-1986

Oppenheim, Alan, "Signals and Systems", 1997, Prentice-Hall Signal processing series, 2nd Edition, pgs 594-596

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. The term "approximately" in claim 3 is a relative term which renders the claim indefinite when contrasted with its usage in the specification.

Claim Rejections - 35 USC § 102

3. Claims 1-12, 21-24, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Laube (US Pat. No. 4,653,086).

4. As to claim 1, Laube discloses a method for transmitting graphical data via a communication line (Abstract), comprising:

generating graphical data representative of a user input (column 6, lines 64-66);

buffering the graphical data in memory (column 6, line 66-column 7, line 1); and

transmitting portions of the graphical data over the communication line to a remote device (column 7, lines 1-10 and column 5, lines 45-47) at a controlled rate that does not exceed a predetermined maximum data transfer rate at which a bandwidth of the communication line would be exceeded (column 5, lines 47-52, transmission using frequency division multiplexing inherently is done at a

controlled rate with a predetermined maximum data transfer rate, i.e. the bandwidths of the frequency divisions).

5. As to claim 6, Laube a method for transmitting graphical data via a communication line, comprising:

generating graphical data representative of a user input (column 6, lines 64-66);

identifying discrete data points of the generated graphical data (column 6, line 66-column 7, line 1, extracted coordinate values read on “discrete data points”); and

transmitting only the identified discrete data points over the communication line to a remote device (column 7, lines 1-10 and column 5, lines 45-47) such less than all of the generated graphical data is transmitted so as to not exceed a bandwidth of the communication line (column 5, lines 47-52, transmission using frequency division multiplexing inherently is done at a controlled rate with a predetermined maximum data transfer rate, i.e. the bandwidths of the frequency divisions).

6. As to claim 24, Laube a system for sharing graphical data via a communication line (Abstract), comprising:

means for receiving voice data (column 1, lines 60-63);

means for generating graphical data representative of a user input entered into a touch-sensitive display (column 6, lines 64-66); and

means for simultaneously transmitting the voice data and information representative of the generated graphical data via the communication line such that a bandwidth of the communication line is not exceeded (column 5, lines 45-53, transmission using frequency division multiplexing inherently is done at a controlled rate with a predetermined maximum data transfer rate, i.e. the bandwidths of the frequency divisions), wherein the means for transmitting comprise means for buffering the graphical data and means for transmitting portions of the graphical data over the communication line at a controlled rate that does not excess a predetermined maximum data transfer rate (column 5, lines 45-53).

7. As to claim 26, it is rejected by the same rationale set forth in claim 6's rejection.

8. As to claims 2 and 7, Laube discloses generating graphical data comprises generating graphical data representative of a line entered using a touch-sensitive display (Fig. 4, and column 6, line 64-column 7, line 1).

9. As to claim 3, Laube discloses transmitting portions of the graphical data to such that no more than approximately 2 kilobits of graphical data is transmitted per second (column 5, lines 45-52).

10. As to claim 4, Laube discloses receiving voice data input via a telephone (Fig. 1 and column 1, lines 60-63).

11. As to claims 5 and 12, Laube discloses simultaneously transmitting the voice data over the communication line along with the portions of graphical data (column 5, lines 45-53).

12. As to claim 8, Laube discloses identifying data points on a periodic basis in which a data point is identified for every predetermined period during user input (column 6, line 64-column 7, line 1).

13. As to claim 9, Laube discloses identifying discrete data points comprises identifying data points on a line length basis in which a data point is identified for every predetermined length of user input (column 5, lines 1-7, distance between "the coordinates" is the predetermined length).

14. As to claim 10, Laube discloses buffering the generated graphical data and identifying new discrete data points that are positioned between the previously identified data points and transmitting the new data points over the communication line (column 6, line 64-column 7, line 5, "redundancy reduction" will only send newly identified points).

15. As to claim 11, Laube discloses repeating the steps of claim 10 in an iterative process (column 6, line 64-column 7, line 5, the process is clearly continuous until the phone is hung up, column 7, lines 30-33).

16. As to claim 21, Laube discloses providing an indication can to the user entering the input that communicates what portion of the input has been transmitted or is currently visible to a recipient (column 6, lines 64-66, what is displayed for the user displayed for the recipient).

17. As to claim 22, Laube discloses providing an indication comprises showing a portion of the input in at least one of a different color (Fig. 4, and column 6, line 64-column 7, line 1), a different grayscale, and a different line thickness.

18. As to claim 23, Laube discloses comprising removing the indication after passage of a period of time (column 7, lines 30-33, when the phone is hung up, the writing is erased).

Claim Rejections - 35 USC § 103

19. Claims 17-20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laube in view of Lamb (US Pat. No. 6,791,571).

20. As to claim 17, Laube discloses a method for transmitting graphical data via a communication line (Abstract), comprising:

generating graphical data representative of a user input (column 6, lines 64-66);

identifying a reference data point (column 6, line 66-column 7, line 1, any extracted coordinate value reads on “a reference point”);

transmitting information that describes the reference data point via the communication line (column 7, lines 1-10 and column 5, lines 45-47);

identifying coordinates of a further data point that identify the location of the further data point relative to the reference data point (column 6, line 66-column 7, line 1); and

transmitting the coordinates to another device via the communication line (column 7, lines 1-10 and column 5, lines 45-47).

Laube, however, does not disclose that the coordinates are relative, rather Laube identifies and transmits coordinates and does not go into specifics as to how they are defined.

Lamb, however, discloses using a relative coordinate system for processing and displaying graphical information (Abstract).

Because both Laube and Lamb teach methods of identifying, transmitting, and reproducing graphical data, it would have been obvious to one of ordinary skill in the art to substitute one method for the other in order to achieve the predictable result of displaying the desired graphical information.

21. As to claim 27, Laube discloses a computer-readable memory that stores a system for sharing graphical data via a communication line (Abstract), the system comprising:

means for receiving voice data (column 1, lines 60-63);

means for generating graphical data representative of a user input entered into a touch-sensitive display (column 6, lines 64-66); and

means for simultaneously transmitting the voice data and information representative of the generated graphical data via the communication line such that a bandwidth of the communication line is not exceeded (column 5, lines 45-53), and means for transmitting the coordinates via the communication line (column 7, lines 1-10 and column 5, lines 45-47).

Laube, however, does not disclose that the coordinates are relative, rather Laube identifies and transmits coordinates and does not go into specifics as to how they are defined.

Lamb, however, discloses using a relative coordinate system for processing and displaying graphical information (Abstract).

Because both Laube and Lamb teach methods of identifying, transmitting, and reproducing graphical data, it would have been obvious to one of ordinary skill in the art to substitute one method for the other in order to achieve the predictable result of displaying the desired graphical information.

22. As to claim 18, Laube and Lamb discloses the invention substantially with regard to the parent claim 17, and further disclose generating graphical data comprises generating graphical data representative of a line entered using a touch-sensitive display (Laube, Fig. 4, and column 6, line 64-column 7, line 1).

23. As to claim 19, Laube and Lamb discloses the invention substantially with regard to the parent claim 17, and further disclose identifying a new reference data point (Laube, column 5, lines 1-7), transmitting information that describes the new reference data point via the communication line (Laube, column 5, lines 7-10), identifying coordinates of another data point that identify the location of the other data point relative to the new reference data point (Laube, column 5, lines 1-7, occurs again when the pen is moved), and transmitting the coordinates via the communication line (Laube, column 5, lines 7-10).

Laube, however, does not disclose that the coordinates are relative, rather Laube identifies and transmits coordinates and does not go into specifics as to how they are defined.

Lamb, however, discloses using a relative coordinate system for processing and displaying graphical information (Abstract).

24. As to claim 20, Laube and Lamb discloses the invention substantially with regard to the parent claim 17, and further disclose simultaneously transmitting the voice data over the communication line along with the portions of graphical data (Laube, column 5, lines 45-53).

25. Claims 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laube in view of Torihata et al (US Pat. No. 4,794,634), hereafter "Torihata."

26. As to claim 29, Laube discloses a sketchpad device (Fig. 1), comprising:

a processing device (Fig. 2, label 76);

an input device that is configured to receive voice data (Fig. 2, label 90 and column 5, lines 45-53);

a user interface with which a user can input information (Fig. 2, label 30);

an output device that is configured to transmit data (Fig. 2, label 90 and column 5, lines 45-53); and

memory that includes a sketch program that identifies user input entered via the user interface and that generates graphical data representative of the user input (column 6, line 66-column 7, line 1), and

a transmission control manager that is configured to, via the output device, simultaneously transmit the voice data and information representative of the generated graphical data via a communication line such that a bandwidth of the communication line is not exceeded (column 5, lines 34-53).

But, Laube does not necessarily disclose that the sketchpad device is independent and that the voice data is from a separate telephone.

However, Torihata discloses an independent sketchpad device that receives and transmits voice data from a separate telephone (column 7, lines 12-17).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Laube and Torihata in order to simplify the device and debugging procedures on it, by physically separating the graphical capabilities from its telephonic capabilities.

27. As to claim 30, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose the input device comprises a telephone jack (Laube, Abstract, lines 1-5).

28. As to claim 31, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose simultaneously transmitting the voice data over the communication line along with the portions of graphical data (Laube, column 5, lines 45-53).

29. As to claim 32, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose the output device comprises a modem (Laube, column 5, lines 45-52).

30. As to claim 33, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose providing an indication can to the user entering the input that communicates what portion of the input has been transmitted or is currently visible to a recipient (Laube, column 6, lines 64-66, what is displayed for the user displayed for the recipient).

31. As to claim 34, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose the transmission control manager is configured to buffer the graphical data (Laube, column 6, line 66-column 7, line 1) and transmit portions of the graphical data over the communication line at a controlled rate that does not exceed a predetermined maximum data transfer rate (Laube, column 5, lines 47-52, transmission using

frequency division multiplexing inherently is done at a controlled rate with a predetermined maximum data transfer rate, i.e. the bandwidths of the frequency divisions).

32. As to claim 35, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose buffering the generated graphical data and identifying new discrete data points that are positioned between the previously identified data points and transmitting the new data points over the communication line (Laube, column 6, line 64-column 7, line 5, "redundancy reduction" will only send newly identified points).

33. As to claim 36, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further disclose identifying a new reference data point (Laube, column 5, lines 1-7), transmitting information that describes the new reference data point via the communication line (Laube, column 5, lines 7-10), identifying coordinates of another data point that identify the location of the other data point relative to the new reference data point (Laube, column 5, lines 1-7, occurs again when the pen is moved), and transmitting the coordinates via the communication line (Laube, column 5, lines 7-10).

34. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laube and Torihata as applied to claims 29, in view of Kishimoto et al (US Pat. No. 4,597,101), hereafter "Kishimoto."

35. As to claim 37, Laube and Torihata disclose the invention substantially with regard to the parent claim 29, and further discloses receiving via the communication line discrete data points that represent graphical data (Laube, column 6, line 64-column 7, line 1).

Laube does not disclose means for generating line segments that connect the discrete data points, and means for displaying the line segments such that a resultant line is shown that comprises the line segments and that represents a user input entered into another device.

However, Kishimoto discloses receiving via the communication line discrete data points that represent graphical data (column 10,lines 8-23), means for generating line segments that connect the discrete data points (Fig. 4, and column 7, lines 55-68, and "difference vectors" (column 2, lines 15-25) read on "line segments"), and means for displaying the line segments such that a resultant line is shown that comprises the line segments and that represents a user input entered into another device (Fig. 4 and column 3, lines 59-65).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Laube and Kishimoto in order to more efficiently encode the graphical data thereby decreasing bandwidth requirements (Kishimoto, column 2, lines 3-14).

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses replies individually.

(1) The appellant argues that the examiner's 35 U.S.C. 112, second paragraph, rejection of claim 3 is improper, contending that the term "transmitting portions of the graphical data to such that no more than approximately 2 kilobits of graphical data is transmitted per second" is consistent with the Appellant's specification and define the invention as required by 35 USC 112.

In reply to argument (1), the examiner asserts the term "approximately" in claim 3 is a relative term which renders the claim indefinite when contrasted with its usage in the specification.

As provided in MPEP 2173.05(b):

> When a term of degree is presented in a claim, first a determination is to be made as to whether the specification provides some standard for measuring that degree. If it does not, a determination is made as to whether one of ordinary skill in the art, in view of the prior art and the status of the art, would be nevertheless reasonably apprised of the scope of the invention. *Even if the specification uses*

the same term of degree as in the claim, a rejection may be proper if the scope of the term is not understood when read in light of the specification.

The term "approximately", given in the context of claim 3, "transmitting portions of the graphical data to such that **no more than approximately 2 kilobits** of graphical data is transmitted per second" (claim 3 lines 2-3, emphasis added) and contrasted with its usage in the specification, "Accordingly, with reference to block 308, the graphical data is transmitted at a controlled rate (under the control of the transmission control manager 214) that **does not exceed a predetermined maximum data transfer rate**. By way of example, the **maximum data transfer rate is set to approximately 2 kilobits per second**," (page 8, lines 19-23, emphasis added) renders the claim indefinite. The specification clearly states that the controlled rate does not exceed a maximum data transfer rate, and gives that maximum transfer rate an approximate value. However, the claim reads as transmitting no more than approximately 2 kilobits; transmitting at approximately 2 kilobits may very well exceed 2 kilobits and therefore no "predetermined maximum data transfer rate" not to be exceeded exists. For example, one may conclude that "no more than approximately 2 kilobits" to mean 1.9 kilobits while another may think that it means 3 kilobits (since kilobit is a unit very small for precise measurement). Therefore, the term "no more than approximately 2 kilobits' render the claim language indefinite.

For the above reason claim 3 stands rejected under 35 U.S.C. 112, second paragraph.

(2) The appellant argues that the Laube reference does not teach transmitting data "at a controlled rate that does not exceed a predetermined maximum data transfer rate at which a bandwidth of the communication line would be exceeded."

In reply to argument (2), the examiner asserts Laube discloses transmitting portions of the graphical data over the communication line to a remote device (column 7, lines 1-10 and column 5, lines 45-47) at a controlled rate that does not exceed a predetermined maximum data transfer rate at which a bandwidth of the communication line would be exceeded (column 5, lines 47-52, transmission using frequency division multiplexing is logically done at a controlled rate with a predetermined maximum data transfer rate, i.e. the bandwidths of the frequency divisions).

Specifically, as the appellant notes, Laube discloses transmission of voice and graphically data within a limited bandwidth (column 5, lines 45-53), but the appellant nonetheless maintains that this transmission is neither at a controlled rate nor a rate that would not exceed the bandwidth of the communication line. Thus, it would seem, it is the appellant's contention that Laube's transmission rate is not controlled and exceeds the bandwidth of the communication line.

Firstly, the examiner notes that transmitting within a limited bandwidth must be done at a controlled rate (the operative word being "limited"). Since Laube's system must be aware of the value of the limited bandwidth (because it is actively using it), any such transmission would be controlled to that bandwidth. More broadly with respect to the limitation transmission not exceeding "a predetermined maximum data transfer rate

at which a bandwidth of the communication line would be exceeded," any electronic communications over communication lines with any anticipation of success (success being getting corresponding data from one terminal end of the line to the other terminal end) is controlled so as not to exceed the bandwidth of the communication line and Laube's system is no different. The rationale behind such a practice is easily apparent, because if the transmission rate exceeds the bandwidth of the line, how can one expect to receive all the data at the other end of the line? It would be impossible. In relation to Laube's system, clearly the "limited bandwidth" the frequency division multiplexing modem transmits over is not going to exceed the maximum data transfer rate of the communications line, as Laube is able to get all the data from one terminal end of the line to the other terminal end that it intends to.

Lastly, in regards to the appellant's contention that transmission rates and transmission frequencies are not comparable, the examiner notes that both rates and frequencies are measurements of occurrences over a period of time. Further, as stated previously, Laube explicitly discloses transmission over "a limited bandwidth" and the claimed invention uses precisely the same term; "bandwidth." Thus the examiner asserts the bandwidth disclosed in Laube is comparable to the bandwidth recited in the claims.

For at least the above reason, claims 1-12, 17-24, 26-27, and 29-37 stand rejected.

(3) The appellant argues that the Laube reference does not teach "transmitting only discrete data points over the communication line to a remote device such less than all of the generated graphical data is transmitted."

In reply to argument (3), the examiner asserts Laube discloses that coordinate values are used to represent graphical data (column 6, line 64-column 7, line 1) and naturally it follows that "the redundancy reduced data" (column 7, lines 1-10) that is transmitted uses a subset of the stored coordinate values, these coordinate values being discrete data points. Therefore, Laube discloses transmitting only the identified discrete data points over the communication line to a remote device such less than all of the generated graphical data is transmitted (column 7, lines 1-10 and column 5, lines 45-47).

As the appellant acknowledges, the cited portions of Laube disclose the transmission of "redundancy reduced graphical data," but the appellant nonetheless maintains that there is no reason to assume that Laube's system transmits a subset of stored coordinate values. The examiner notes "reduced" is defined as to have brought down to a smaller extent, size, amount, number, etc. Thus, since Laube discloses transmitting "reduced graphical data" it must be a subset (i.e. not the entire data set) of the originally identified graphical data and hence less than all of the generated graphical data.

For at least the above reason, claims 6-12 and 21-23 stand rejected.

(4) The appellant argues that Lamb does not provide a teaching or suggestion of "identifying relative coordinates of a further data point that identify the location of the further data point relative to" a reference data point that has already been transmitted and therefore the examiner failed to state a prima facie case of obviousness.

In reply to argument (4), the examiner notes the appellant is arguing against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Specifically, the examiner stated Laube discloses identification of coordinate values (column 6, line 66-coumn 7, line 1) among other limitations of the claimed invention. All that is lacking from the Laube disclosure is that said coordinate values are relative and that their values are relative to previously identified coordinate values. Therefore, Lamb was relied upon to disclose the use of a relative coordinate system (Abstract) in a system and method for formatting and displaying information, such as text, graphics, audio/visual multimedia, etc. with a computer environment (column 1, lines 9-14). Nonetheless, "identifying relative coordinates of a further data point that identify the location of the further data point relative to" reference data points is essential to Lamb relative coordinate system (Abstract, lines 8-13, "Each object can be...dependent on other objects (relative values).") That is, the coordinate values are dependent on and relative to other objects (values or coordinates). Thus, reference

data points are essential for any such relative coordinate system and column 6, lines 30-35 of Lamb ("coordinate location = GO1+(15,35)" is a relative coordinate format with "GO1" being a previously identified reference point and "+(15,35)" identifying where this coordinate value is relative to point GO1) gives one such example.

For at least the above reason, claims 17-20 and 27 stand rejected.

(5) The appellant argues a person having ordinary skill in the art would not be motivated to combine the teachings of Laube and Lamb in relation to claims 17 and 27.

In reply to argument (5), the examiner has stated in previous actions that because both Laube and Lamb teach methods of identifying, transmitting, and reproducing graphical data, it would have been obvious to one of ordinary skill in the art to substitute one method for the other in order to achieve the predictable result of displaying the desired graphical information.

Further, the claim would have been obvious because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to anticipated success, it is likely the product of innovation but of ordinary skill and common sense. In regards to the combination of the teachings of Laube and Lamb, it would have been obvious because a person of ordinary skill in the art would be motivated to utilize the relative coordinate system set forth in Lamb in Laube's system as it is within the technical grasp of one of ordinary skill in the art and Lamb provides

specific details for a coordinate system as an alternative for the detail deficient coordinate system utilized by Laube.

For at least the above reason, claims 17-20 and 27 stand rejected.

(6) The appellant argues with respect to the rejection of claim 29 that Laube and Torihata do not disclose an “independent” sketchpad device, i.e. a sketchpad device independent of a telephone, and "an input device that is configured to receive voice data from a separate telephone".

In reply to argument (6), claim 29 recites, "An independent sketchpad device” (line 1). The examiner notes this is recited in the preamble and need not be given patentable weight. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Further, the examiner notes that the features upon which appellant relies (i.e., a sketchpad device independent of a telephone) are not recited in the rejected claim. The claim simply recites an “independent sketchpad device” and does not state what the sketchpad is independent from or how. Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Lastly, the examiner notes, Torihata discloses "an input device that is configured to receive voice data from a separate telephone" (column 7, lines 12-17, the telephone and the tablet portion are connected via a cable). Furthermore, Fig. 8 of Torihata could be pointed to as disclosing multiple separate telephones (labels 600 and 700) that the input device (the tablet and associated circuitry) is configured to receive voice data from.

For at least the above reason, claims 29-36 stand rejected.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Thomas J. Dailey

/T. J. D./

Examiner, Art Unit 2152

Conferees:

/Kenny S Lin/

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